

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

BIOLET S. GREEN	§	
v.	§	CIVIL ACTION NO. 6:08cv146
DIRECTOR, TDCJ-CID	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Biolet Green, proceeding *pro se*, filed this application for the writ of habeas corpus complaining of the legality of her conviction. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Green was convicted of delivery of a controlled substance in a drug-free zone, receiving a sentence of 30 years in prison. She did not take a direct appeal, but says that she filed a state habeas petition which was rejected by the state district court because she did not have the correct cause number on it. Green also says that she filed a time commutation request, which was denied on May 11, 2006.

After review of the pleadings, the Magistrate Judge issued a Report on April 25, 2008, recommending that the petition be dismissed without prejudice for failure to exhaust state remedies. The Magistrate Judge noted that the on-line records of the Texas Court of Criminal Appeals did not show that Green had presented her claims there in any manner, by habeas corpus, discretionary review, or mandamus. The Magistrate Judge also observed that Green's list of the claims which she presented in her state habeas petition was different from the claims which she presented in her federal petition.

Green filed a response to the Magistrate Judge's Report on May 19, 2008. This response acknowledged that she had not presented her claims to the Texas Court of Criminal Appeals and says "therefore, petitioner agrees with the U.S. Magistrate Judge's recommendation to dismiss without prejudice so she can file her state writ of habeas corpus and/or seek writ of mandamus with the Texas Court of Criminal Appeals [if the state district court will not file her state habeas petition]."

The Court has conducted a careful *de novo* review of the pleadings in this cause, including the original petition, the Report of the Magistrate Judge, the Petitioner's response thereto, and all other pleadings, documents, and records in the case. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED without prejudice. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So ORDERED and SIGNED this 21st day of May, 2008.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**